ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 8

[FRL–5994–1]

Extension of Effective Date of Environmental Impact Assessment of Nongovernmental Activities in Antarctica

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 30, 1997, the Environmental Protection Agency (EPA) promulgated a regulation on environmental impact assessment of nongovernmental activities in Antarctica under Public Law 104–227, the Antarctic Science, Tourism, and Conservation Act of 1996. The April 30, 1997, Interim Final Rule applies only to nongovernmental activities that may occur through the 1998–99 austral summer, to be replaced by a final rule. The EPA had planned to promulgate the final rule prior to October 2, 1998. However, representatives from the affected industry and environmental nongovernmental organizations (NGOs) have requested that EPA delay promulgation of the final rule for at least one year so that more experience with the Interim Final Rule can be considered in developing the final rule. After consultation with other Federal agencies which are involved with nongovernmental activities in Antarctica, EPA has determined that this request is reasonable and that additional time to develop the final rule will be beneficial. In order to delay promulgation of the final rule, EPA must amend the Interim Final Rule to extend its applicability through the 2000–2001 austral summer. Accordingly, EPA is proposing this amendment to extend the effective date of the Interim Final Rule.

The EPA is also publishing an identical amendment to the Interim Final Rule as a direct amendment to the interim final rule in the final rules section of today's **Federal Register**. The EPA is promulgating the amendment to extend the effective date of the Interim Final Rule as a direct amendment to the interim final rule without prior proposal, because EPA views this as a noncontroversial action and anticipates no adverse comments. However, if the time extension amendment in the direct final rule receives relevant adverse comment, then EPA will withdraw the direct amendment to the interim final rule prior to its effective date and consider the comments received on it as comments on this proposed rule. For instructions on commenting to EPA on this proposed rule, please see the **ADDRESSES** section.

DATES: Comments must be received by June 15, 1998.

ADDRESSES: Comments must be addressed to Mr. Joseph Montgomery or Ms. Katherine Biggs, Office of Federal Activities (2252A), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Montgomery or Ms. Katherine Biggs, Office of Federal Activities (2252A), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone: (202) 564–7157 or (202) 564–7144, respectively.

SUPPLEMENTARY INFORMATION: For additional information, see the direct amendment to interim final rule published in the final rules section of this **Federal Register**. For information on this proposed rule and the associated direct amendment to interim final rulemaking, see the **SUMMARY** section of this document.

I. Executive Order Clearance

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA determined that the Interim Final Rule (62 FR 83, 23544 (April 30, 1997)) was a ''significant regulatory action.'' Although none of the first three criteria apply, the Interim Final Rule raised novel legal or policy issues arising out of legal mandates under P.L. 104–227, the Antarctic Science, Tourism, and Conservation Act of 1996 and the Protocol on Environmental Protection to the Antarctic Treaty of 1959. Accordingly, the Interim Final Rule was submitted to OMB for review. Changes were made in response to OMB recommendations. The EPA has determined, however, that this action to amend the effective date of the Interim Final Rule is not a ''significant regulatory action'' because the legal and policies issues raised are no longer novel and were considered previously by OMB and because the first three criteria still do not apply. Accordingly, this action was not submitted to OMB for review.

II. Regulatory Flexibility Act

The EPA determined that the Interim Final Rule issued April 30, 1997, was not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any proposed and final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. By its terms, the RFA applies only to rules for which the Agency is required to conduct notice-and-comment rulemaking under the Administrative Procedure Act (APA) or any other statute. The Interim Final Rule was not subject to the RFA because EPA promulgated the rule invoking the ''good cause'' exemption provided in section 553(b) of the APA, 5 U.S.C. 553(b)(B), which removed the rule from the APA notice and comment requirements.

Today's proposed regulation, although it does no more than extend the effective date of the Interim Final Rule, is not exempt from APA notice and comment requirements, and is, therefore, subject to the requirements of the Regulatory Flexibility Act. The Agency has carefully assessed the impact of this proposed regulation on small entities, and has determined that it is appropriate to certify that it will not have a significant economic impact on a substantial number of small entities.

This determination is based on several factors. First, the total number of entities subject to the rule is small, probably no more than 10. However, the overwhelming majority of the affected entities will be small. Nevertheless, the impact of the rule will be low because assessments are already done pursuant to the current rule. Further, because the Interim Final Rule, as proposed today, only requires assessment of environmental impacts, it will not cause any revenue reductions. The only economic effects of the rule on small businesses will be limited primarily to the cost of preparing an assessment. As

explained further below in the discussion of the Paperwork Reduction Act, these costs should have been relatively minor even for the first year's submission, which all operators completed. Further, EPA anticipates few, if any, new operators will enter the field, and that for existing operators submissions in succeeding years will be able to re-use or modify substantial portions of the first year's documentation, further reducing costs.

In addition, EPA has ensured the impact to small entities is minimized by drafting the Interim Final Rule such that the requirements it imposes are no greater than necessary to ensure that the United States will be in compliance with its international obligations under the Protocol and the Treaty. Finally, EPA has included a number of provisions, e.g., incorporation of information and consolidation of documentation, in the Interim Final Rule which should minimize the cost of such an analysis.

III. Unfunded Mandates Reform Act and Executive Order 12875

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. The UMRA did not apply to the Interim Final Rule because it was necessary for the ratification and implementation of international treaty obligations. The Interim Final Rule was not subject to the requirements of sections 202 and 205 of the UMRA. In any event, EPA determined that the Interim Final Rule did not contain a Federal mandate that may result in annual expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or for the private sector. The EPA also determined that the Interim Final Rule contained no regulatory requirements that might significantly or uniquely affect small governments under section 203 of the UMRA. This proposed action is merely an extension of the effective date of the Interim Final Rule and imposes no burdens that may result in annual expenditures of $100 million or more. The rule, as extended, also is not expected to impact small governments significantly or uniquely. Accordingly, the requirements of UMRA do not apply.

Executive Order 12875, Enhancing Intergovernmental Partnerships, likewise requires EPA to address certain effects on state, local, and tribal governments, but does not apply to the private sector. Since this regulation will affect only the private sector, and not any local, state, or tribal governments, the Executive Order does not apply.

IV. Paperwork Reduction Act

The information collection requirements in the Interim Final Rule were submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under Section 1320.13 of this Act, EPA received emergency approval, and a six month extension of this approval, from OMB for the Interim Final Rule. The OMB's approval expires in August 1998. Information Collection Request (ICR) Supporting Statements were prepared by EPA for the emergency approval of the ICR for the Interim Final Rule (ICR No. 1808.01) and the extension of this approval, and copies may be obtained from Ms. Sandy Farmer, Regulatory Information Division (2136), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; telephone: (202) 260–2740.

The emergency request for ICR approval along with the Interim Final Rule were necessary so that implementing regulations would be in place contemporaneously with the United States' ratification of the Protocol and in order to implement its obligations under the Protocol as soon as the Protocol entered into force. The Interim Final Rule provides nongovernmental operators with the specific environmental documentation requirements they must meet in order to comply with the Protocol.

Nongovernmental operators, including tour operators, conducting expeditions to Antarctica are required to submit environmental documentation to EPA that evaluates the potential environmental impact of their proposed activities. If EPA has no comments, or if the documentation is satisfactorily revised in response to EPA's comments, and the operator does not receive a notice from EPA that the environmental documentation does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of the interim final regulations, the operator will have no further obligations pursuant to the applicable requirements of the interim final regulations provided that any appropriate measures, which may include monitoring, are put in place to assess and verify the impact of the activity.

The type of environmental document required depends upon the nature and intensity of the environmental impacts that could result from the activity under consideration. The Interim Final Rule provides for incorporation of material into an environmental document by referring to it in the document when the effect will be to reduce paperwork. Further, an operator may include more than one proposed expedition within one environmental document and one environmental document may also be used to address expeditions being carried out by more than one operator further reducing burden. In addition, EPA anticipates that operators will likely use the environmental documents submitted for their 1997–1998 expeditions, with appropriate revisions, for submittal in subsequent years under the Interim Final Rule.

This proposed action is merely an extension of the effective date of the Interim Final Rule, and is being proposed in part in response to Antarctica tour operators. The EPA is preparing the ICR Supporting Statement for the Interim Final Rule taking into account the experience of the Federal agencies and the nongovernmental operators, including tour operators, subject to the Interim Final Rule during the 1997–1998 austral season covered by OMB's emergency ICR approval. A **Federal Register** Notice will be published informing the public of the availability of the Supporting Statement for review and comment. Following the public comment period, EPA will address any relevant comments and then request OMB's approval of the ICR for the Interim Final Rule prior to the information collection schedule for the 1998–1999 austral season. For the limited time the Interim Final Rule will be in effect, the EPA anticipates that operators will, as they did for the 1997–1998 austral season, make one submittal per year for all of their expeditions for that year. No capital costs or operational and maintenance costs are anticipated to be incurred as a result of the ICR for the Interim Final Rule. The following estimates were provided in the Interim Final Rule promulgated on April 30, 1997 (62 FR 83, 23538 (April 30, 1997)).

Frequency of Reporting: Once per year.

Affected Public: Businesses, other nongovernmental entities including for profit entities, and not for profit institutions.

Number of Respondents: 8.

Estimated Average Time Per Respondent: 120 Hours.

Total Annual Burden Hours: 960.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying

information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

V. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act, 15 U.S.C. 272 note, EPA must use voluntary consensus standards to carry out policy objectives or activities unless it would be impractical to do so. In this case, such standards, applicable to this regulation, do not exist. Accordingly, the use of such standards is not required.

VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. This proposed rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 8

Environmental protection, Antarctica, Enforcement, Environmental documentation, Environmental impact assessment, Penalties, Prohibited acts.

Dated: April 2, 1998.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 98–10007 Filed 4–14–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–5996–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant a petition submitted by Kokoku Steel Cord Corporation in Scottsburg, Indiana to exclude (or ''delist'') certain solid wastes generated by its wastewater treatment plant from the lists of hazardous wastes contained in Title 40 of the Code of Federal Regulations, Subpart D of Part 261. Since submitting the petition, Kokoku Steel Cord has been bought by American Steel Cord, a division of Michelin North America, Inc. and the name of the facility has been changed to American Steel Cord. American Steel Cord has stated that no changes have occurred in the raw material or the processes generating the waste as described in the original petition. American Steel Cord has adopted the petition as its own, and has certified that all information contained in the original petition and in subsequent submittals is true, accurate, and complete. This action responds to a ''delisting'' petition submitted under § 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 266, 268 and 273, and under § 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists. This proposed decision is based on an evaluation of waste-specific information provided by the petitioner. If this proposed decision is finalized, the petitioned waste will be conditionally excluded from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

DATES: EPA is requesting public comments on this proposed decision. Comments must be received in writing by June 1, 1998. Comments postmarked after the close of the comment period will be stamped ''late.''

Any person may request a hearing on this proposed decision by filing a request with Norman R. Niedergang, Director, Waste, Pesticides and Toxics Division, at the address below, by May 15, 1998. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Two copies of any comments should be sent to Judy Kleiman, Waste Management Branch (DRP–8J), U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604.

Requests for a hearing should be addressed to Norman R. Niedergang, Director, Waste, Pesticides and Toxics Division (D–8J), U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604.

The RCRA regulatory docket for this proposed rule is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Federal holidays. Call Judy Kleiman at (312) 886–1482 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, contact Judy Kleiman at the address above or at (312) 886–1482.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in §§ 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing a person to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have its waste excluded, a petitioner must show that the waste generated at the facility does not meet any of the criteria for which the waste was listed. See § 260.22(a)(1) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require EPA to consider any